

BUILDING A NUISANCE CASE
PROFESSIONAL PROPERTY MANAGEMENT
ASSOCIATION OF SAN FRANCISCO
2020



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About John Zanghi

John has been representing landlords in San Francisco since 1991. In 1995, he started his own office with a focus on representing property management companies with market rate and subsidized housing portfolios. In 2004, John Zanghi, Francisco Torres, and Paul Arshawsky formed Zanghi Torres Arshawsky LLP; a partnership specializing in the representation and counseling of landlords and property managers of residential and commercial rental property throughout the Bay Area.

ABOUT ZANGHI TORRES ARSHAWSKY LLP

Zanghi Torres Arshawsky LLP represents property management companies, affordable housing providers, private landlords and real estate investors throughout Northern California.

The three partners of Zanghi Torres Arshawsky LLP each have more than 25 years experience in landlord-tenant law.

Affordable housing remains one of our sub-specialties with our attorneys having substantial knowledge of, and experience with, various governmental programs related to affordable housing.

We also represent many owners and property managers of market rate and rent controlled properties throughout the bay area. Our attorneys have the knowledge and experience to represent our clients in any matter involving rent and eviction controls in regulated communities throughout Northern California.

A significant part of our practice involves issues related to the Fair Housing Act, the Americans With Disabilities Act and Section 504 of the Rehabilitation Act. We frequently work with our clients in responding to reasonable accommodation requests and related matters. We have represented clients in defense of fair housing complaints. We have revised leases and operating manuals to incorporate fair housing guidelines; and also participated in many grievance and mediation hearings relative to fair housing issues. Our attorneys have also taught classes and seminars to property managers regarding fair housing laws and reasonable accommodation requests.

WHAT IS A NUISANCE

Civil Code § 3479 which defines nuisance as

Anything which is injurious to health, including, but not limited to, the illegal sale of controlled substances, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin, or any public park, square, street, or highway, is a nuisance.

As explained in a commonly used landlord-tenant treatise, California Residential Landlord Tenant Practice:

“Under this definition (Civ. Code Sec. 3479), the existence of nuisance seems to depend on the extent to which the activity affects others’ ability to enjoy their lives and property. In the landlord-tenant context, nuisance most commonly applies to tenant activity that seriously disturbs other tenants or neighbors, such as loud noise late at night, vile and offensive language, and quarrelsome behavior.

EVICTING FOR NUISANCE:

Under California State Law:

Any tenant... maintaining, committing, or permitting the maintenance or commission of a nuisance upon the demised premises or using the premises for an unlawful purpose, **thereby terminates the lease**, and the landlord.. shall upon service of three days' notice to quit upon the person or persons in possession, be entitled to restitution of possession of the demised premises under this chapter

In San Francisco with respect to nuisance, a landlord may evict under the Rent Ordinance when:

The tenant is committing or permitting to exist a nuisance in, or is causing substantial damage to, the rental unit, or is creating a substantial interference with the comfort, safety or enjoyment of the landlord or tenants in the building, the activities are severe, continuing or recurring in nature, and the nature of such nuisance, damage or interference is specifically stated by the landlord in the writing as required by Section 37.9(c).

Building A Case for Nuisance

Nuisance and Nuance

CCP §1161.4 the tenant terminates the lease by engaging in the conduct...

Why is this important?

- A tenant terminates his/her tenancy when they engage in the nuisance or illegal conduct.
- So sending a warning letter or accepting rent reinstates the tenant's tenancy after the tenant's terminating act.

Nuisance Cases - Considerations

It's not what you know...it's what you can prove [Alonzo Harris - Training Day]

The Rent Ordinance Requires Specificity for a Nuisance Notice

Document Tenant Complaints and Observations

Telephone calls and hallway conversations are often forgotten

Request E-mails, Letters, Notes

- Follow up. Ask the who, what, where, and when

Witness Statements to particularly egregious events - altercations, criminal acts

Police Reports - CAD Numbers and Immediate Requests

Photographs or Video:

For nuisance activity, or illegal activity, or breach of lease provisions, of any type, the best evidence is photographs and video. Retain the video tapes of events at the building. Have the security tapes copied before they are taped over or deleted. Also, if a tenant contends something happened and it should've been captured on security video - make a copy to prove something didn't happen.

For hoarder/clutterer cases photographs and video are especially helpful. It is very difficult to convey the seriousness of the problem if you are only trying to describe the problem. Most tenant attorneys', judges and juries cannot comprehend the problem unless they see it with their own eyes.

You've Gathered the Evidence Is it Enough to Evict

Notice or Warning Letter

Warning Letters

A Word on Warning Letters:

If a tenant has committed or permitted a nuisance, habitually paid rent late, engaged in or permitted illegal activity, or violated a term of the rental agreement, community rules, or guest policy, and you just want to warn the tenant to comply **AND you do NOT want to evict**, you should use a Warning Letter.

You should **NOT** use a Notice to Quit unless there are sufficient grounds and evidence to file an unlawful detainer and recover possession of the premises.

A warning letter is a letter which warns that the continued activity by the tenant might lead to the termination of the tenancy. A warning letter may also correct the behavior but also have evidentiary value of your efforts to work with the tenant before resorting to an eviction.

Tenants defend nuisance cases using a reasonable accommodation defense. Warning letters undermine this defense by encouraging the tenant to engage in services to prevent further issues.

A warning letter is also an excellent tool for creating the paper trail which in some case might be necessary before proceeding to terminate the tenancy.

If There Is Enough to Evict: A Notice to Quit

Don't send a warning letter - you run the risk of waiving, or giving up, the right to evict based on that particular incident or breach of lease.

The better course of action, if you believe there is enough evidence for a nuisance case work with your attorney and prepare a notice to quit with specificity and in reliance on events that have been documented.

Remember - It's not what you know...it's what you can prove

NUISANCE COMMON DEFENSES

Victim of Domestic Violence:

San Francisco Rent Ordinance.

Violence Against Woman Act.

Reasonable Accommodation

Nexus and necessity of the accommodation so that the person with the disability will have an equal opportunity to use or maintain their housing. Relationship between the accommodation and the disability to provide/maintain housing.

Reasonable Accommodation Requests for Violent/Aggressive

Behavior: Does the tenant's continued residency constitutes a "direct threat" to other residents/staff.

"Direct Threat" determination based on three factors: 1. The nature, duration, and severity of the risk of injury; 2. The probability that injury will actually occur; and 3. Whether there are any reasonable accommodations that will eliminate the risk.

Determination must be based on overt acts rather than fear, speculation or stereotypes. Objective versus speculative criteria.

Accommodation for Threatening/Aggressive Behavior: Therapy(Anger Management, Drug Therapy, Substance Abuse Counseling)

Reasonable Accommodation Requests for Hoarding and Cluttering:

Tenants' need for accommodation and accommodation plan - In Home Support Services; Milestones and Inspections.

Evictions in the Time of Covid 19

Limited access to Court

Unlimited Tenant Resources for Representation

Eviction Moratoriums - All Provide An Exception for Nuisance

San Francisco Eviction Moratorium

No owner shall recover possession of a residential dwelling unit, including but not limited to any unit specified in subsection (1)(a)(i), if the effective date of the notice of termination would fall within two months after the date this Order expires, unless the owner can show it is necessary to recover possession ***due to violence, threats of violence, or health and safety issues***.

California Eviction Moratorium

Exception under CCP Section 1179.03.5 and Civil Code Section 1946.2

CCP Section 1179.03.5 provides in relevant part

(a) Before February 1, 2021, a court may not find a tenant guilty of an unlawful detainer unless it finds that one of the following applies:...

(3) (A) The unlawful detainer arises because of a termination of tenancy for any of the following:... (i) An at-fault just cause, as defined in paragraph (1) of subdivision (b) of *Section 1946.2 of the Civil Code*.

Civil Code Section 1946.2 provides:

(b) For purposes of this section, "just cause" includes either of the following:...

(C) Maintaining, committing, or permitting the maintenance or commission of a nuisance as described in paragraph (4) of Section 1161 of the Code of Civil Procedure....

(F) Criminal activity by the tenant on the residential real property...

CDC Moratorium

Then, the order lists five categories of evictions that it does not preclude: "Nothing in this Order precludes evictions based on a tenant, lessee, or resident: (1) engaging in criminal activity while on the premises; (2) threatening the health or safety of other residents; (3) damaging or posing an immediate and significant risk of damage to property; (4) violating any applicable building code, health ordinance, or similar regulation relating to health and safety; or (5) violating any other contractual obligation, other than the timely payment of rent or similar housing-related payment (including non-payment or late payment of fees, penalties, or interest).